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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1383rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS
later: Mr. FALL
(Vice-Chairman)
later: Mr. SHERIFIS
(Chairman)

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fourteenth and fifteenth periodic reports of Spain

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GE.00-41045 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth and fifteenth periodic reports of Spain (CERD/C/338/Add.6; HRI/CORE/1/Add.2/Rev.2)

1. At the invitation of the Chairman, Mr. Pérez-Hernández y Torra, Mr. Aparicio Gómez-Lobo, Ms. Vevia Romero, Mr. Pérez Medina, Mr. Albaladejo Campos, Mr. de Ossorvo Almécija, Mr. Hernández Jiménez and Mr. de Palacio España took places at the Committee table.

2. Mr. PÉREZ-HERNÁNDEZ Y TORRA (Spain) said that the importance Spain attached to the presentation of its report was reflected in the composition of its delegation, with its wide range of expertise. Since the submission of the report there had been considerable changes aimed at strengthening the laws and policies to combat racial discrimination and intolerance. The Committee would be brought up to date on legislative reforms, policies and programmes, the situation of foreigners and some aspects of the Autonomous Communities. He looked forward to a constructive dialogue with the Committee which he hoped would demonstrate his Government's determined efforts to combat racial discrimination. There was clearly room for improvement in some areas, but what was important was the continued political will to avoid the recurrence of such situations and to strengthen the role of civil society in Spain which, like the Government, had consistently stood firm against social exclusion which often resulted in racial discrimination and intolerance.

3. Ms. VEVIA ROMERO (Spain), reporting on recent developments in legislation, said that the promulgation of Organization Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration had changed the situation of immigrants in Spain, with greater emphasis now being laid on their social integration. The Act included new features relating, inter alia, to residency, employment, health, social security, education, family reunion and minors. It also introduced amendments to articles 312, 515, 517 and 518 of the Criminal Code concerning penalties for those responsible for or associated with the illegal trafficking of workers and for those providing financial support for racist organizations. The introduction of a new section in the Criminal Code concerning offences against the rights of aliens and relating principally to matters of illegal trafficking filled a gap in existing legislation. Until very recently Spain had basically been a country of transit but it was now also a destination of clandestine workers and a series of preventive and remedial measures had been adopted pursuant to the new Act in that connection.

4. In June 1998 Spain had withdrawn its reservation with regard to article 22 of the Convention concerning its acceptance of the jurisdiction of the International Court of Justice. In January 1998, Spain had made the declaration under article 14 of the Convention recognizing the Committee's competence to receive and examine communications from groups or individuals alleging violations by the State of any of the rights in the Convention, but only following the exhaustion of all domestic remedies, and subject to communications being submitted to the Committee within a three-month period following the final judgement. The establishment of a

special administrative body for processing such complaints had not been deemed necessary given the broad civil, criminal and administrative guarantees provided inter alia by Act No. 62/78 relating to judicial protection of fundamental rights and the possibility of instituting amparo proceedings in the Constitutional Court.

5. The rights and freedoms of foreigners in Spain were duly protected and a series of legal guarantees were provided to that end. In addition to the provisions of article 24 of the Constitution, article 22 of the new Act on the rights and freedoms of foreigners in Spain stipulated that in the event of any discriminatory practice which infringed the rights and fundamental freedoms of a foreigner judicial protection could be extended in the ordinary courts or, where appropriate, through the remedy of amparo in the Constitutional Court.

6. Act No. 4/2000 also provided for the protection of the right to appeal against administrative acts and the right to legal assistance free of charge. Under the Act, administrative decisions taken with respect to foreigners were open to appeal (art. 19), and foreigners were also entitled to request the repeal of administrative provisions which were not in conformity with the law as well as to seek compensation for damages incurred and to lodge appeals against the State for failure to comply with its obligations. Article 20 of the Act stipulated that foreigners were entitled to the assistance of a court-appointed lawyer in administrative and judicial proceedings in connection with refusal of entry into, expulsion or forced departure from Spanish territory as well as in matters of asylum. They also had the right to the assistance of an interpreter if they did not understand or speak the official language. Moreover, foreigners who were resident or registered who did not have sufficient resources to bring a case to court were entitled to legal aid under the same conditions as Spaniards.

7. With regard to legal action taken against acts of violence with racist or xenophobic connotations or incitement to violence on those grounds, it was worth noting that, although the majority had been registered as assault cases some had been registered as offences classified in the Criminal Code as acts of racial discrimination. They included genocide, provocation of discrimination, acts with racist motives as an aggravating circumstance and refusal to provide a service on grounds of race. Further details were provided in an annex to the report (CERD/C/338/Add.6).

8. Although progress had been made in recent years with respect to the legal protection of foreigners, especially immigrants, it was recognized that a considerable effort would have to be made in future to ensure that such protection was guaranteed on a day-to-day basis in all walks of life. Following the recent events in El Ejido (Almería) numerous cases of threats, constraint and assault had been brought before the local court. Legal action had also been taken in Torres Pacheco and Cartagena for fraud and infringement of labour rights by Moroccan nationals who had paid large sums of money in order to be included in the annual quotas of foreigners with regular work permits.

9. Mr. GOMEZ-LOBO (Spain), providing further information on the legal protection of the rights and freedoms of foreigners, referred to the influx of immigrants to Spain in recent years. In 1998 the total number of foreigners in the country with a valid residence permit had stood at 719,647, an 18 per cent increase over 1997, which had prompted measures to ensure the full social integration of such persons.

10. The Plan for the Social Integration of Immigrants was designed to guarantee a stable social and legal situation for them and to eliminate any form of discrimination. Section 1 of Act No. 4/2000 covered the rights and freedoms of foreigners in Spain, family reunion, legal guarantees and measures against discrimination, while Royal Decree No. 239/2000 laid down the procedures to be followed by foreigners for obtaining residence permits.

11. Under Act No. 4/2000 foreigners enjoyed the same rights and freedoms as those of Spaniards laid down in section I of the Constitution, the only exception being with regard to certain voting rights. The principle of equal treatment was underscored in articles 21 and 22 of the Act which referred to measures to combat discrimination on the grounds of race, colour, descent, national or ethnic origin or religious beliefs and practices. Article 21 reflected the concept of racial discrimination in the same terms as were enshrined in article 1.1 of the Convention. Act No. 4/2000 also provided for the possibility of summary proceedings under article 53.2 of the Constitution as a legal guarantee in that connection. Under article 50 of Act, No. 4/2000, discriminatory acts were qualified as very serious offences and were liable to high fines. The interpretation of the basic rights of foreigners was in line with that of the Universal Declaration of Human Rights and international treaties and agreements ratified by Spain. The Act also provided for the Standing Forum on Immigration on which immigrants and their support associations, members of the civil service, trade unions and employers' organizations were represented.

12. Among the specific rights accorded to foreigners were the right and obligation to keep identity documents, the right to vote in municipal elections, the right to freedom of assembly and freedom of association, the right to work in the civil service and the right to form trade unions and to strike. All foreigners had access to basic and compulsory education free of charge and to other forms of education, and also to basic social welfare services. Health care was provided for all registered foreigners and to all minors, pregnant women and persons in need of emergency treatment irrespective of their legal status. Assistance with respect to housing was available to those foreigners who were resident or registered. The right to family reunion was also guaranteed to relatives other than the spouse on humanitarian grounds.

13. Accompanying legal guarantees included effective legal protection, the right to be represented by legally recognized associations in administrative proceedings, the right to a court-appointed lawyer and interpreter and the right to free legal aid. The classification of a number of discriminatory acts as punishable offences allowed for access to summary proceedings in conformity with article 53.2 of the Constitution.

14. With regard to social policies and programmes, he said that the Institute of Migration and Social Services (IMSERSO) attached to the Ministry of Labour and Social Affairs was responsible for the social integration of immigrants, refugees and displaced persons and for assisting asylum-seekers. Its activities included the compilation and publication of official statistics on immigrants and asylum-seekers. According to its statistics, as at December 1998 Europeans made up the largest group of immigrants (46 per cent) followed by Africans (25 per cent), Latin Americans (19 per cent) and Asians (8.5 per cent). Almost 80 per cent of the total foreign population was of an age to work and 41 per cent of the total was concentrated in Madrid and Barcelona. IMSERSO's quarterly report containing statistics on immigrants and asylum-seekers, would be made available to the Committee, as would information on State

subsidies granted to numerous non-governmental organizations (NGOs) and public bodies in recent years for aid programmes intended for immigrants and refugees. A monitoring centre had been set up in IMSERSO to study xenophobia and racial discrimination against the immigrant population. It would prepare the RAXEN (European Racism and Xenophobia Information Network) report, monitor the situation of the press and media with regard to xenophobia and racism and publish the results of annual surveys of the general public's attitude to immigration. Aside from specialist publications, the monitoring centre had also launched an important multilingual information campaign to assist immigrants in registering with their local authorities.

15. Special programmes were aimed at immigrants from Sub-Saharan Africa and the Maghreb countries in the frontier towns of Ceuta and Melilla. A number of special reports on the situation of immigrants in those towns had been annexed to the report. The number of immigrants to Melilla - currently some 200, from Algeria, Iraq and Sub-Saharan Africa - had increased by 7 per cent since 1998. They were housed in a recently established facility (CETI) providing them with temporary shelter and training, the "La Granja" settlement having been dismantled in October 1999 following disturbances there. A budget of 1,000 million pesetas had been allocated for the CETI reception centre in Melilla and a similar centre would shortly be inaugurated in Ceuta, where the number of immigrants, chiefly from Nigeria, had risen from 1,184 in 1998 to 7,784 in 1999.

16. Another noteworthy recent development in the light of the outbreak of racist violence against Moroccan immigrants in the town of El Ejido was the establishment of a special commission to implement the relevant agreement reached between employers' associations, trade unions and representatives of the Moroccan workers. Urgent measures under the agreement which had been adopted in the previous three weeks included providing accommodation for immigrants whose homes had been damaged, immediate compensation for all damages caused during the disturbances and registration of immigrants without valid identity documents. IMSERSO was cooperating with the State and regional authorities with a view to drawing up an action plan focusing on emergency housing, an employment plan, temporary accommodation and the improvement of council housing in the Autonomous Community of Andalusia. Spain's new role as a host country for immigrants had called for a change in attitudes on the part of Spanish society, which was generally in favour of the social integration of immigrants, condemning discriminatory acts that had taken place and demanding the adoption of appropriate preventive and remedial measures.

17. The rapid pace of change, the high level of illiteracy and lack of schooling had left many Spanish Gypsies marginalized. While precise data on the number of Gypsies in Spain could not be collected directly owing to the constitutional right of privacy, the community's population had been estimated at between 600,000 and 650,000, with some much better integrated than others. The most marginalized groups had high birth rates and low life expectancy, dropped out of school and lacked vocational training more often than the rest of the population, and tended to live in poor conditions. A Gypsy Development Plan had been established with a view to improving their situation. Under the plan, the Ministry of Labour and Social Affairs carried out activities to enhance inter-institutional cooperation, provide financial and technical assistance to NGOs working with disadvantaged Gypsies, enhance the image and dissemination of Gypsy culture and combat discrimination against members of the community. Since the submission of Spain's periodic report, a Sub-Commission for the Study of the Problems of the Gypsy

Community had been set up by the parliamentary Commission on Social and Employment Policy, and in December it had issued a document outlining the most serious problems facing Gypsies in Spain. On 4 March 1999, the Defenders of the People of Spain and of eight Autonomous Communities had issued a public declaration in support of the rights of the Gypsies. In addition, two directives and a plan of action to combat discrimination and foster equality of treatment had recently been proposed by the European Commission and were under discussion, and a Gypsy Education Group had been established within the Ministry of Labour and Social Affairs.

18. The Ministry of Education and Culture had a special programme for inter-cultural and remedial education for disadvantaged groups, which was aimed at improving their chances of integration. The Ministry supported mobile educational support units which provided education to circus families, as well as special programmes for children of migrant workers and for the maintenance of the language and culture of minority and immigrant groups. The Government subsidized non-profit organizations active in remedial education and took part in the European Socrates-Comenius-Action 2 programme. While most Gypsy children were now enrolled in schools, there were high drop-out and absenteeism rates and few went beyond the mandatory secondary level. As to immigrants and refugees, the enormous variety of cultures complicated efforts to develop specific programmes.

19. Mr. PÉREZ MEDINA (Spain) described the situation of languages in Spain. The 1978 Constitution recognized a joint official status regime for Galician, Basque, Catalan and Valencian in the territories where they were spoken. Some 41 per cent of the population currently lived in such territories. The proportion of people who understood the local language in the Autonomous Communities ranged from 22.7 per cent in Navarra and 43.2 per cent in the Basque Country, to as much as 97.3 per cent in Catalonia and 98 per cent in Galicia. The six Autonomous Communities concerned had adopted their respective language laws and policies between 1982 and 1986, and Spanish case law had generally been favourable to the local legislation. The adoption of a new law in 1998 by the Catalan Government aimed at intensifying the use of Catalan, had been challenged by Castilian speakers in Catalonia, but both the Spanish Government and the Office of the Defender of the People, an independent body, had concluded that the Catalan law was in keeping with the Constitution. The regional Government had, since its adoption, applied the law with great care and had made efforts to conclude agreements with the various sectors that would be affected, including multinational enterprises. In 1999, just 20 complaints had been lodged with the Defender of the People relating to language policy in Catalonia. A total of nine had been filed in four other Autonomous Communities with regional languages.

20. A clear majority of the population accepted the existing language policy. A 1998 survey, at the disposal of the Committee, bore out that assertion. In any event, that policy, which encouraged immersion and the use of local languages alongside Castilian Spanish, was preferable to a system whereby the local and national languages were separated, which would for instance require the creation of two distinct education systems. Such an option could lead to the establishment of two separate communities, which would only exacerbate the risk of conflict.

21. Mr. RECHETOV (Country Rapporteur) welcomed the fact that the Spanish delegation represented a broad spectrum of Government agencies, including the police. The comprehensive

information given in the introductory presentation on social questions, such as the situation of foreigners, immigrants and Gypsies might usefully have been included in the written report, which was unfortunately rather brief. In its concluding observations in 1996 (CERD/C/304/Add.8), the Committee had in 1996 requested that Spain's next report should be comprehensive and up to date, and provide complete information on the ethnic composition of the population and the socio-economic characteristics of each group. Much of the relevant information was contained not in the report but in the appendices, which were too voluminous to have been forwarded to the experts prior to the session, let alone translated, which made consideration of the report somewhat problematic, particularly as some of the references to the appendices misdirected the reader.

22. In its previous concluding observations the Committee had expressed concern about the increasing manifestation of racism, xenophobia and discrimination against foreigners. The fifteenth periodic report stated that the legislative groundwork had been laid for the prosecution of offences involving racial discrimination, but that it had not curbed the phenomenon of xenophobia and racism against foreigners, which was attributable to the activities of skinheads and to social or labour-related problems. It also referred to the difficulty involved in detecting racial discrimination, as many of the offences in question were reported simply as assault. As a result, only six discrimination cases had been filed in four high courts.

23. In its previous concluding observations the Committee had also regretted the lack of precise information on the socio-economic situation of Gypsies and on the exact status of the Muslim population of Ceuta and Melilla. The appendices to the report currently under consideration provided some information, and even some research results. Yet a question of concern to the Committee remained. Was it true that Spanish residents of Ceuta and Melilla held identity cards which were different from those of other Spanish citizens, and that the reason was because their ancestors had been of foreign descent? The Committee had also expressed concern about the lack of information on the training of members of the security forces, the judiciary and the public service in the avoidance of racial discrimination. While the report addressed that issue, it did not give an indication that there was an extensive programme to involve the security forces in such work.

24. The oral presentation and the report had shed much light on the complex problem of language policy, which was not unique to Spain. The Russian Federation, too, had certain republics which gave pride of place to the local language, thus placing the Russian language in a secondary position. A number of NGOs had informed the Committee that the decisions taken by the Spanish authorities led to discrimination against the Castilian-speaking population of Catalonia and fostered an attitude of nationalism among Catalans. The NGOs asked about guarantees for the rights of Castilian-speakers, including the right to attend school in their native language, requested information on the financing of Castilian and Catalan language teaching, and asked why certain information was disseminated only in Catalan. While acknowledging the complexity of the language issue, he said that it was in the interests of the country to ensure that such questions did not become subjects of antagonism between national groups.

25. The report stated that Spanish legislation had provisions which prohibited neo-Nazi or racist organizations and provided for their dissolution, but it also reported that no organizations

or associations had been the subject of such measures. That would indicate either that they did not exist or that the regulations in question were not effective, perhaps because they were not applied properly.

26. The social and economic situation of foreigners was a subject of concern not only to NGOs, but also to the International Labour Office, which had issued a report on the matter. On the situation of Moroccan applicants for employment, it had found that in 116 of 269 cases there had clearly been unequal treatment. The fifteenth periodic report gave little information on compensation provided to victims of discrimination and, although the subject had been taken up during the oral presentation, further information would certainly be of interest to the Committee.

27. In the light of the situation of Gypsies in Spain, it would perhaps be of interest to the Spanish delegation and Government to note that the Committee was planning to hold a special session in August 2000 on the situation of Roma in Europe. Increasing attention was being paid at the international level to the plight of Roma people throughout the world, in part thanks to the Committee's work.

28. Spain had made the declaration under article 14 of the Convention allowing for individual complaints to be lodged with the Committee, but had attached the condition that such communications could be sent only after the exhaustion of domestic remedies and within a period of three months. Since the Convention stipulated that the petitioner should have up to six months to lodge the complaint, the Spanish declaration was inadequate. It should be made clear to the Government that it had not fulfilled the requirements of article 14.

29. In its concluding observations issued in 1996 the Committee on Economic, Social and Cultural Rights had noted with great concern acts of discrimination and racism against foreigners in Spain, and particularly against North Africans, asylum-seekers, illegal workers and Gypsies. In 1997 the Committee against Torture had stated in its concluding observations that it had received information concerning many cases of ill-treatment which appeared to constitute manifestations of racial discrimination. The European Commission against Racism and Intolerance (ECRI), and some Jewish organizations such as the American Jewish Committee, had noted that anti-Semitism did not yet seem to be entirely eradicated from Spanish society. Amnesty International had drawn attention to alleged cases of torture of members of Euzkadi ta Askatasuna (ETA) by the police during pre-trial detention and inhuman and even criminal treatment of some Moroccan prisoners. The Government of Spain should continue working to eliminate such examples of discrimination.

30. He thanked the delegation for its continuing dialogue with the Committee. The country was undergoing major changes as it attempted to overcome obstacles remaining from its past. On the whole the new developments were positive and the Committee's questions and recommendations were simply aimed at further developing its dialogue with the State party in the interest of the rule of law and the successful implementation of the Convention.

31. Mr. FALL, Vice-Chairman, took the Chair.

32. Mr. VALENCIA RODRIGUEZ, commending the report as a positive contribution to Spain's dialogue with the Committee, noted that reform of the Criminal Code and the work of

the Defender of the People had led to a decrease in xenophobia although the number of offences involving racial discrimination had not dropped significantly. Racism was reported to be occasional rather than organized in nature and could usually be attributed to far-right movements. That situation was further aggravated by labour market problems related to immigration and Gypsies. The latter were of special concern, and the measures described in paragraph 47 must be further developed.

33. New measures had been implemented pursuant to Act No. 4/2000 to deal with the problems related to the large numbers of legal and illegal immigrants. There had been reports of ill-treatment of immigrants who were blamed for taking jobs from Spanish citizens even though they usually accepted jobs which Spanish citizens did not want. The new measures should reconcile both the principles of national sovereignty and the human rights of new arrivals. The Committee should be kept informed of progress made in that area, and he urged the Government to make use of information provided by Spanish NGOs and to take their recommendations into account.

34. With regard to the implementation of article 2 of the Convention, he stressed the importance of the establishment of the European Monitoring Centre on Racism and Xenophobia and the activities organized during the European Year against Racism in 1997, and of the establishment of the Spanish Committee in that connection, and hoped that the Committee would be kept informed of the results of those activities.

35. With regard to article 3, the State party had taken due note of the Committee's interest in possible practices of racial segregation, especially in large cities, where economic segregation was directly related to racial or ethnic considerations.

36. With regard to the implementation of article 4 of the Convention, he noted that a racist organization could only be dissolved by the courts, not by the administration. A legally constituted association might change its objectives and begin to promote racial discrimination, and he wondered whether a private citizen would have to initiate proceedings before the courts or the Office of the Defender of the People or whether the authorities could act on their own initiative, and whether any measures had been taken to deal with the neo-Nazi groups mentioned in paragraph 45.

37. With regard to article 6 of the Convention, Spanish law stipulated that Spanish citizens and foreigners were equal before the law with respect to the rights governed by the Convention. When cases of racial discrimination did occur, however, they tended to be dealt with as cases of assault. He wondered whether that was because judges and lawyers were reluctant to recognize the racial or ethnic basis for those acts and whether they might not even be aware of the provisions of the Convention. Following the previous report of Spain, the Committee had expressed concern about continued mistreatment of foreigners by the police and he reiterated the Committee's expectation that the Defender of the People would be able to improve that situation.

38. With regard to article 7 of the Convention, a welcome development had been the holding of the European Seminar in Madrid in March 1998. The Seminar's recommendations and the Madrid Declaration had been sent to the European Commission and those activities should have a positive influence on the Government's efforts to eliminate all forms of racial discrimination.

39. He expressed satisfaction that Spain had withdrawn its reservation relating to article 22 and had made its declaration under article 14 of the Convention, but noted that it required communications to be made within three months of exhausting all domestic remedies, rather than six months as stipulated in the Convention.

40. Finally, in the area of language rights, he noted the decision of the Constitutional Court (para. 62) requiring the Autonomous Communities to ensure knowledge of both the local language and Spanish and guaranteeing full equality in the area of linguistic rights and duties. However, the Association for Tolerance, an NGO based in Barcelona maintained that language policy in Catalonia favoured Catalan to the point that Catalan was considered by the administration to be the only, or at least the preferred language. He agreed with that Association that the Spanish Government should take steps to ensure that the protection of minority languages did not lead to policies and practices which limited the rights of citizens who spoke the national language. The Association had also indicated that as a result of that situation, there had been outbreaks of ethnic xenophobia to prevent those who did not consider themselves to be Catalan nationalists from exercising their right to freedom of expression and association.

41. Mrs. ZOU Dexi said that the size of the Spanish delegation testified to the importance the Government attached to the work of the Committee. She was, however, disappointed that, despite the fact that following the previous report the Committee had requested much more specific information on the socio-economic situation of the Gypsy community in the areas of, for example, housing, education and employment, the current report contained only one paragraph (para. 56), on that topic, which simply referred the reader to an annex. The annexes had only been available to members after their arrival in Geneva and then only in Spanish. In future any issues arising out of the concluding observations of the Committee should be more fully developed in the report and be available in the Committee's four working languages.

42. The delegation's oral presentation had dealt with the Gypsies but was still unsatisfactory. No statistics were said to be available on the ethnic breakdown of Spanish society because the Constitution protected privacy of identity. She wondered whether Gypsies hesitated to disclose their ethnic origin for fear of discrimination. The Gypsy population tended to be concentrated in several major cities and Gypsy children tended to have a high school drop-out rate. She could not credit the view that it was because Gypsy children did not like school that they left school early. As a result of their low educational level Gypsy children did not have the same opportunities as other Spanish children and subsequently had problems finding employment. The World Directory of Minorities had reported in 1997 that half of all Gypsies did not have proper employment and those that did have jobs often worked below the minimum wage, 7.5 per cent were illiterate, infant mortality rates were 11 per 1,000, life expectancy was lower than other Spaniards, only 5 per cent could expect to live past the age of 55, and Gypsies often lacked adequate housing.

43. If the Spanish Government committed itself to studying and resolving the Gypsy problem, it could succeed. She hoped that, in the future, the Spanish Government would pay more heed to the Committee's concluding observations and provide more complete information on the socio-economic situation of the Gypsy people.

44. Mr. DIACONU said that, coming from a country with a large Roma minority, he was very interested in the Gypsy situation in Spain and asked whether the development plan for the Roma people in Spain, begun in 1988, had been successful. He wondered whether such plans in general were useful or needed to be modified and whether the Gypsies of Spain tended to emigrate towards other European countries, such as Central Europe, or whether immigration tended to be from Central Europe to Spain. He would also be interested to know how many Roma requested political asylum.

45. Although the report (para. 5) noted an increase in violence by youth, including violence against foreigners by extremist groups, the numbers of race-related complaints had declined, which seemed paradoxical. Such crimes tended to be classified as cases of assault rather than racist crimes (para. 40). The police and other authorities must be trained to recognize racism and discrimination as defined by the Convention and must mention it in any charges laid, in order to ensure effective implementation of the Convention.

46. With reference to paragraph 45, he had the impression that the Defender of the People was in fact rather powerless and inquired what role he played in drawing the attention of the police and prosecutors to racist or discriminatory incidents.

47. He shared Mr. Rechetov's concerns about the legal status of residents of Ceuta and Melilla. He, too, acknowledged the seriousness of the problem of language rights. In that context, he asked, for example, how education rights were guaranteed for both the Basque and Spanish languages, whether there were separate schools for the two linguistic groups or whether each group was expected to learn both languages.

48. Mr. Sherifis, Chairman, resumed the Chair.

49. Mr. de GOUTTES said that the report contained a number of positive elements. New measures had improved the situation of immigrants, including illegal immigrants. Temporary permits would be granted after two years' residency and immigrants and their children had the right to schooling and to social benefits. He wondered whether, like other countries, the Government intended to regularize the situation of illegal residents and what impact the very recent elections would have on that situation. The Government had made its declaration under article 14 of the Convention and had expressed its commitment to the provisions of article 25 of the European Convention on Human Rights. He wished to know, however, why the Spanish declaration under article 14 required that communications should be filed within three months after the exhaustion of local remedies, rather than six months as provided for by the Convention.

50. Paragraphs 15, 27 and 28 of the report described changes to the Criminal Code which seemed to satisfy the requirements of article 4, although the question of the implementation and application of those changes remained. Efforts described to improve human rights awareness and tolerance amongst the police and the Civil Guard were commendable, although the report was also very frank in recognizing (para. 55) that the security forces still did not always behave correctly towards foreigners.

51. He was somewhat surprised that Spain's fifteenth periodic report had not placed more emphasis on the Europeanization of the fight against racial discrimination, a development which could be seen in the Treaty of Amsterdam (art. 13) and also in a draft programme of action and two draft directives to that effect proposed by the European Union.

52. Paragraph 6, which stated that the words "racist" and "xenophobic" were losing their force, suggested that there had been a trivialization of the phenomenon of racism. That was a worrisome development. Yet according to paragraph 9, racism and xenophobia had two main sources: the skinhead movement, and social and labour-related problems. Was such a statement not inconsistent with the aforementioned assertion in paragraph 6?

53. With regard to the information provided on the functioning of the Criminal Code, the Committee still needed to know more about how effectively the Code was implemented. For example, no specific case had been cited in which a racist organization had been punished or abolished, notwithstanding the report's recognition of the existence of such organizations. Had any measures been taken against them?

54. According to paragraph 41, the persons arrested in connection with the events in El Ejido had been charged not with racial discrimination, but with assault, unlawful detention and illegal entry. That was regrettable because, pursuant to section 22 of the Criminal Code, racist intent constituted an aggravating circumstance. Was section 22 properly applied? Would it not be useful to issue instructions to the prosecuting authorities to take racist intent into account in cases of violence or assault? What was the nature of the charges lodged after the more recent, much more serious, events that had occurred in El Ejido in February?

55. Paragraph 65 stated that Act No. 1/98 of 7 January 1998 bordered on unconstitutionality, but that, following talks with the Generalitat de Cataluña, it had been decided not to file an action for unconstitutionality in the Constitutional Court. Was that decision in keeping with legal and constitutional criteria, or had it been taken for political considerations and out of a desire to maintain law and order in the region? According to section 3 of that Act, Catalan and Spanish were the official languages of Catalonia. Did that fully meet the recommendation made by the Committee in its concluding observations on Spain's thirteenth periodic report calling for the authorities to take measures to ensure that Castilian-speaking children had the possibility of receiving education in Castilian in Catalonia? A report sent to the Committee by the NGO *Organización por la tolerancia* had referred to difficulties in that regard. Did the delegation have any additional information on the subject?

56. Ms. McDOUGALL said with reference to the Roma population that she had come across a number of alarming statistics: only 35 per cent of Roma children were enrolled in school, 60 per cent did not complete primary school and very few finished secondary school; more than 80 per cent of parents were functionally illiterate. The Spanish NGO Gypsy Presence found that one fifth of teachers described themselves as anti-Roma, and one quarter of pupils said that they would like to see the Roma expelled from the schools. Although paragraphs 47 to 49 showed that some initiatives had been taken to educate pupils and teachers about those issues, she would like to have additional information on other programmes.

57. A city ordinance prohibiting peddling had apparently been overturned, but it was still sometimes enforced, and other municipalities had introduced similar laws, all to the detriment of the Roma. How was the State party dealing with that matter? What programmes in the formal employment sector addressed issues of discrimination? Roma women in particular were said to have difficulty finding work because of the stereotype of their having a very high birth rate; that was the reason given by some employers for refusing to hire Gypsy women.

58. Mr. LECHUGA HEVIA pointed out that, in its concluding observations on Spain's previous periodic report, the Committee had noted that acts of racial discrimination constituted an impediment to the full implementation of the Convention. Although efforts had been made to combat such acts in a number of areas, the situation had not changed very much, judging by what could be read every day in the press on racist incidents throughout the country. According to a recent ILO report, 36 per cent of foreign workers residing legally in Spain had been denied employment by firms because of their origin and 25 per cent of Moroccans had not even been permitted to apply formally for employment.

59. Paragraph 5 stated that statistics for 1997 concerning acts reported to the police indicated a decrease in racist and xenophobic activity in comparison to 1996. Could the delegation provide more recent information?

60. The numerous incidents in which Gypsies had been the victims of racial discrimination showed that many provisions of the Convention were not implemented in their regard. The Spanish delegation had said that a study was to be conducted on Gypsies; should it not have been carried out much earlier? Was it a new study or a continuation of an earlier one?

61. He referred to the dissemination of racist messages by neo-Nazi groups in rock music on CDs, which were readily available in the marketplace or on the Internet. Allowing such propaganda was a violation of article 4 (a) of the Convention. Could the delegation comment on that subject? Was such propaganda not prohibited in the Criminal Code?

62. He asked about detention centres for foreigners who had entered the country illegally. According to the Madrid Bar, such centres did not provide full legal guarantees. The Defender of the People had denounced police ill-treatment in those facilities. Could the delegation explain what measures had been taken to improve the situation there?

63. Discrimination was also reported in the housing sector. According to the National Union of Workers, landlords were reluctant to rent to foreigners from developing countries, even when such persons could show that they were employed. It appeared that Gypsies and Moroccans were the groups hardest hit by such discrimination.

64. Mr. PILLAI asked whether the decrease in racist and xenophobic activities referred to in paragraph 5 was in part due to a decline in the social or labour-related problems cited in paragraph 9.

65. Turning to paragraphs 29 and 30, he asked what consequences removal from the Associations Register on grounds of activities with racist connotations would have for an association. Would it no longer benefit from state support? Would such removal serve as an example to other organizations with similar goals?

66. With reference to paragraphs 42 and 43 in particular, it would have been helpful if a summary of the information contained in the many annexes had been provided in the appropriate paragraph of the report. On paragraph 43, it would be useful to have a study of cases in which racial discrimination was the underlying motive.

67. Mr. NOBEL asked the delegation to comment on the World Directory of Minorities' estimate that there were between 170,000 and 260,000 undocumented migrants in Spain, or as many as half the total of legally resident foreigners.

68. Spanish citizenship was granted only by birth to children of Spanish-born parents, and that resulted in large numbers of children being deprived of their legal rights. It was to be hoped that those children would also benefit from the new legislation referred to earlier.

69. According to the World Directory of Minorities, police violence against members of new minorities as well as Roma/Gypsies was widely documented. Not only was the behaviour of the authorities of direct importance for preventing such groups from becoming the victims of police violence, but it also set a dangerous example. When the police beat up members of minorities with impunity, it encouraged skinheads to follow suit.

70. He was concerned about the creation of a "Fortress Europe" through a harmonization of immigration policy within the European Union which involved moving immigration controls to the outer Union borders. The emerging notion of an area within which there was freedom of movement for all European Union citizens while persons from other countries were undesirable contained the germ of racism. Such immigration legislation easily led to racist practices in their implementation.

71. Did Spain impose sanctions on airlines which transported foreigners to Spain without first checking their documents? If so, did the delegation find it appropriate that the responsibility of Governments set out under the 1951 Geneva Convention relating to the Status of Refugees for determining whether an asylum-seeker was a bona fide refugee was delegated to airline staff?

72. Mr. FALL said that the recent events in Andalusia were clearly acts of xenophobia directed against all Moroccans. What measures was the Spanish Government taking to combat such acts of racial discrimination as provided for under section 510 of the Criminal Code?

73. Mr. BRYDE said that, like Mr. de Gouttes, he was anxious to see whether the legislation passed in February to improve and in certain cases legalize the situation of immigrants would survive the previous Sunday's elections, since it had been passed despite opposition by the Government, which now had a majority to change it.

74. He had read an interview in the 11 March edition of the newspaper Le Monde with the president of an association of Moroccan workers who had been warning for years about the

explosive situation in El Ejido, where large numbers of agricultural workers lived in very poor, insalubrious conditions, segregated from the local population and subject to abuse by employers. In the interview, it was maintained that similar situations existed elsewhere in Spain. What was planned to avoid a repetition of the El Ejido events, not only by improving police action, but also by rectifying the social conditions?

75. Mr. YUTZIS said that paragraph 7 referred to the as yet more occasional than organized nature of racism in Spain but considered that, when such manifestations took place repeatedly, they ceased to be merely occasional and gave great cause for concern.

76. The comparative ILO report referred to earlier had found that in many cases foreigners were refused employment not because they lacked the skills, but for xenophobic reasons. What preventive measures were being taken, and what was being done to address not only the legal, but also the social aspect of the problem?

The meeting rose at 6.05 p.m.